In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 335

SWARCO, INC. (SWAN RUBBER COMPANY, DIVISION OF AMERACE CORPORATION), PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The only question presented here is whether it is an unfair labor practice in violation of Section 8 (a) (3) and (1) of the National Labor Relations Act for an employer to discriminate between strikers and non-strikers by arbitrarily granting super seniority to employees who refrain from striking or abandon the strike, and by subsequently laying off, as junior employees, strikers who do not return to work until after the strike's termination.

This is the same question which is presented in *National Labor Relations Board* v. *Erie Resistor Corporation and International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO*, pending on petition for writ of certiorari, No. 288, this Term. As the petition in that case sets forth, the question is of importance and there is a conflict of decisions among the circuits on the issue.[1] Accordingly, the Board does not oppose the grant of this petition.

Respectfully submitted.

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SEPTEMBER 1962.

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[1] The decision of the Sixth Circuit in this case conflicts with the Third Circuit's decision in *International Union of Electrical, R. & M. Wkrs.* v. *National Labor Relations Board*, 303 F. 2d 359, and the Ninth Circuit's decision in *National Labor Relations Board* v. *Potlatch Forests, Inc.*, 189 F. 2d 82.

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